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September 3, 2009

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SENT BY FAX AND FIRST CLASS MAIL

Honorable Paul S. Diamond
U.S. District Court for the Eastern District of Pa.
6613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: Maximino M. Estrada, individually and as
Administrator of the Estate of Yolanda A. Carias-Santos
v. Home Depot USA, Inc., Honda North America, Inc.
and MTA Distributors, Inc.
Civil Action No. 08-4367

FILED

SEP 11 2009

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

Harleysville Mutual Insurance Company v. Home Depot U.S.A., Inc.
U.S.D.C., E.D. Pa.; Civil Action No. 09-CV-3782
Our File No. 2886

Dear Judge Diamond:

As you might be aware the mediation you had ordered to occur before Magistrate Judge Timothy R. Rice was suspended September 1, 2009. Judge Rice mentioned his plan to provide you with a full report of what occurred.

I have not been copied on whatever pleading has been recently filed by Harleysville Insurance Company. Attorney Dubrow alerted Judge Rice and all parties present for the mediation that a declaratory judgment action had been filed in the Eastern District August 18, 2009 naming Home Depot as the sole defendant.

Enclosed is a copy of correspondence January 22, 2009 from Juanita Purcell on behalf of Harleysville Insurance Company. Ms. Purcell attended the mediation on behalf of MTA. This letter was provided to me by Home Depot through responses to plaintiff's request for production of documents. This is a reservation of rights letter addressed to Home Depot counsel in Chicago. I also received answers to insurance coverage interrogatories and document responses from MTA, insured by Harleysville, advising insurance coverages in force for MTA.

We understand that Home Depot is the only named defendant in the declaratory judgment action. Maximino Estrada, American Honda Motor Company, Inc., and MTA Inc. would all be

Honorable Paul S. Diamond
U.S. District Court for the Eastern District of Pa.

September 3, 2009
Page 2

interested parties in the coverage issues now being advanced by Harleysville. Surprisingly, none of these other parties were placed on notice of the dec action until September 1 to our collective surprise.

You had previously addressed the indemnification issues among the defendants. As you recall from the initial status conference January 5, 2009, defense counsel could not entertain settlement negotiations because of the unresolved indemnity issues. You ordered briefs to be filed by the defendants. They were submitted to the Court last April on indemnity issues.

This declaratory judgment action filed on the brink of mediation apparently raises some significant issues contrary to the enclosed coverage position statement from Harleysville. This new declaratory judgment action could create a second front for numerous appealable issues. It calls into question effective settlement negotiations under the circumstances.

The plaintiff respectfully requests a prompt conference among all counsel in both actions with the court. This would help resolve issues that are intertwined between the two actions. It would also resolve what effect, if any, the new Harleysville action might have on pending deadlines and the trial date of November 17, 2009. We have copied Attorney William T. Salzer who we understand filed the dec action.

Thank you for your indulgence.

Respectfully yours,

LAW OFFICES OF JESSE L. PLEET, P.C.



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JLP:sld

Enclosure

cc: The Honorable Timothy R. Rice (w/enc)
United States Magistrate Judge
U.S. District Court for the Eastern District of Pa.
Kenneth M. Dubrow, Esquire (w/enc)
Tiffany M. Alexander, Esquire (w/enc)
Frederick T. Lachat, Jr., Esquire (w/enc)
William F. Salzer, Esquire (w/enc)
Mrs. Denise D. Belluch, Paralegal